

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
3:11-cv-368-RJC**

JAMIE LEE CLYBURN,

Plaintiff,

v.

**FNU PITTSMAN; FNU MARSH;
FNU MICHAELS; FNU DENNIS;
FNU MACARAIN; FNU McMALINSA;**

Defendants.

ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Voluntary Dismissal. (Doc. No. 12).

In his Complaint, Plaintiff contends that defendants damaged his hearing aid and refused to medically treat his ear. (Doc. No. 1). On October 25, 2011, Plaintiff filed a letter complaining that he did not have the money to pay the filing fee for this case, and requesting that it be dismissed. (Doc. No. 9). In response, the Clerk sent Plaintiff a letter on October 28, 2011, explaining how the filing fee works in prisoner civil rights cases. (Doc. No. 11). In the letter, the Clerk stated that Plaintiff could either move to dismiss his case, or ask the Court review the merits of his Complaint, but in either event, he would be required to pay the filing fee in installments when there was money in his trust account pursuant to 28 U.S.C. § 1915(a). (Id.) The Clerk directed Plaintiff to advise the Court whether he still wished to voluntarily dismiss his case within ten (10) days of receipt of the letter. (Id.).

On November 8, 2011, Petitioner filed a motion stating that he would like to voluntarily

dismiss his case. (Doc. No. 12).¹ Rule 41 of the Federal Rules of Civil Procedure allows a plaintiff to voluntarily dismiss his Complaint without a court order before the opposing party serves an answer or dispositive motion. FED. R. CIV. P. 41(a)(1)(A). In the instant case, the defendants have not yet been served with the Complaint and no answer or dispositive motion has been filed. Therefore, Plaintiff's Motion to Dismiss is granted.

IT IS, THEREFORE, ORDERED that:

- (1) Plaintiff's Motion to Dismiss, (Doc. No. 12), is **GRANTED** and Plaintiff's Complaint is **DISMISSED without prejudice**;
- (3) The Court's previous Order Waiving the Initial Filing Fee and Directing Monthly Payments, (Doc No. 7), remains in place; and
- (4) The Clerk is directed to send a copy of this Order to the pro se Plaintiff.

Signed: November 29, 2011



Robert J. Conrad, Jr.
Chief United States District Judge



¹ In his letter, Plaintiff also make threats directed at Frank Johns, Clerk of Court. Plaintiff is advised that the Court takes any threat very seriously and has forwarded a copy of his letter to the United States Marshal. Plaintiff shall not make any further threats against Mr. Johns or any other Court personnel in his communication with the Court.